

HOUSE BILL 86  
By Ferguson

AN ACT to amend Tennessee Code Annotated, Title 48, Chapter 101, relative to "The Professional Service Corporation Act of 2005".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 48, Chapter 101, is amended by deleting Part 6 in its entirety, and by adding Sections 2 through 24 as a new part thereto.

SECTION 2. It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization.

SECTION 3. This part shall be known and may be cited as "The Professional Service Corporation Act of 2005".

SECTION 4. As used in this part, unless the context otherwise requires:

(1) "Eligible person" means an individual, corporation, partnership, fiduciary, qualified trust, association, government agency, or other entity, that is eligible under this part to own shares issued by a professional corporation;

(2) "Ineligible person" means any individual, corporation, partnership, fiduciary, trust, association, government agency, or other entity which for any reason is or becomes ineligible under this part to own shares issued by a professional corporation. The term includes a charitable remainder unitrust or charitable remainder annuity trust that is or becomes an ineligible person for failure to comply with subsection (5)(B) of this section;

(3) "Professional corporation" means a corporation which is organized under this part for the purpose of rendering professional service;

(4) "Professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization, including certified public accountants, chiropractors, dentists, osteopaths, physicians, surgeons, chiropodists, architects, veterinarians and attorneys-at-law; and

(5) "Qualified trust" means one of the following:

(A) A voting trust, if the beneficial owner of any shares on deposit and the trustee of the voting trust are qualified persons; or

(B) A charitable remainder unitrust as defined in section 664(d)(1) of the internal revenue code or a charitable remainder annuity trust as defined in section 664(d)(2) or 664(d)(3) of the internal revenue code, if the trust complies with each of the following conditions:

(i) Has one (1) or more beneficiaries currently entitled to income, unitrust, or annuity payments, all of whom are eligible persons or spouses of eligible persons;

(ii) Has a trustee who is an eligible person and has exclusive authority over the share of the professional corporation while the shares are held in the trust, except that a cotrustee who is not an eligible person may be given authority over decisions relating to the sale of shares by the trust;

(iii) Has one (1) or more designated charitable remaindermen, all of which must at all times be domiciled or maintain a local chapter in Tennessee; and

(iv) When distributing any assets during the term of the trust to charitable organizations, the distributions are made only to charitable

organizations described in section 170(c) of the internal revenue code that are domiciled or maintain a local chapter in Tennessee.

SECTION 5. This part shall not apply to any individuals or groups of individuals within this state who, prior to the passage of this part, were permitted to organize a corporation and perform personal services to the public by means of a corporation, and this part shall not apply to any corporation organized by such individual or group of individuals prior to the passage of this part; provided, that any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this part by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this part and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this part.

#### SECTION 6.

(a) An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit for the purpose of rendering professional service. One (1) or more of the legally authorized individuals shall be the incorporators of the professional corporation.

(b) Notwithstanding any other provision of this part, registered architects and registered engineers may own stock in and render their individual professional services through one (1) professional service corporation.

(c) Licensed health care professionals, providing services to enrolled participants either directly or through arrangements with a health maintenance organization or federally qualified health maintenance organization, may own stock in and render their individual professional services through one (1) professional service corporation.

(d) Professionals may organize a nonprofit nonstock corporation under this part to provide professional services, and the provisions of this part relating to stock shall not apply to any such corporation.

(e) Notwithstanding any other provision of this part, health care professionals who are licensed or certified pursuant to title 63 may own stock in and render their individual professional services through one (1) professional service corporation and are to be considered, for the purpose of forming a professional service corporation, as rendering the "same specific professional services" or "same professional services" or similar terms.

(f) Formation of a professional service corporation under this section does not restrict the application of a licensure required under titles 62 and 63, or applicable health care professional statutes, including, but not limited to, restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential.

#### SECTION 7.

(a) No corporation organized under this part may render professional services except through individuals who are duly licensed or otherwise legally authorized to render such professional services within this state. However, nothing in this part shall be interpreted to:

(1) Prohibit a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a professional corporation in this state organized for the purpose of rendering the same professional services;

(2) Prohibit a professional corporation from rendering services outside this state through individuals who are not duly licensed or otherwise legally authorized to render professional services within this state; or

(3) Require the licensing of clerks, secretaries, bookkeepers, technicians, and other assistants employed by a professional corporation who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

(b) Persons engaged in a profession and otherwise meeting the requirements of this part may operate under this part as a professional corporation so long as each shareholder personally engaged in the practice of the profession in this state is duly licensed or otherwise legally authorized to practice the profession in this state and:

(A) At least one (1) officer and one (1) director of the corporation is duly licensed or otherwise legally authorized to practice the profession in this state; or

(B) Each officer in charge of an office of the corporation in this state is duly licensed or otherwise legally authorized to practice the profession in this state.

SECTION 8. Except as otherwise provided, all directors of a corporation organized under this part and all officers other than the secretary and the treasurer shall be duly licensed or otherwise legally authorized to render the same specific professional services within this or any other state as those for which the corporation was incorporated.

SECTION 9. Nothing contained in this part shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and the standards for professional conduct. Any director, officer, shareholder, agent or employee of a corporation organized under this part shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by such director, officer, shareholder, agent or employee or by any person under the direct supervision and control of such director, officer, shareholder, agent or employee, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable for any negligent or wrongful acts of misconduct committed by any of its directors, officers, shareholders, agents or employees while they are engaged on behalf of the corporation, in the rendering of professional services.

SECTION 10. No professional service corporation organized under this part shall engage in any business other than the rendering of the professional services for which it was

incorporated or serve as a trustee or as a personal representative. Nothing in this part or in any other provision of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance, or any other type of investments.

SECTION 11. Except as otherwise provided, no professional corporation organized under the provisions of this part may issue any of its capital stock to anyone other than the trustee of a qualified trust or an individual who is duly licensed or otherwise legally authorized to render the same specific professional services within this or any other state as those for which the corporation was incorporated.

SECTION 12. Except for qualified trusts, a proxy, voting trust, or other voting agreement with respect to shares of a professional corporation shall not be valid unless all holders thereof, all trustees and beneficiaries thereof, or all parties thereto, as the case may be, are eligible to be shareholders of the corporation.

SECTION 13. Unless a director, officer, shareholder, agent or employee of a corporation organized under this part who has been rendering professional service to the public is legally qualified at all times to render such professional services within at least one (1) state in which the corporation conducts business, such person shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the office of the secretary of state, the secretary of state forthwith shall certify that fact to the attorney general and reporter, for appropriate action to dissolve the corporation.

SECTION 14. No shareholder of a corporation organized as a professional corporation may sell or transfer such person's shares in such corporation except to the trustee of a qualified trust or another individual who is eligible to be a shareholder of such corporation. Any transfer of shares in violation of this section shall be void. However, nothing in this section prohibits the transfer of shares of a professional corporation by operation of law or court decree.

SECTION 15. A corporation organized under this part may merge or consolidate with another corporation, domestic or foreign, organized to render the same specific professional services, only if every shareholder of each corporation is eligible to be a shareholder of the surviving or new corporation.

SECTION 16.

(a) If:

(1)

(A) A shareholder of a professional corporation dies;

(B) A shareholder of a professional corporation becomes an ineligible person;

(C) Shares of a professional corporation are transferred by operation of law or court decree to an ineligible person; or

(D) A charitable remainder unitrust or charitable remainder annuity trust that holds shares of a professional corporation becomes an ineligible person; and

(2) The shares held by the deceased shareholder or by such ineligible person are less than all of the outstanding shares of the corporation;

Then the shares held by the deceased shareholder or by the ineligible person may be transferred to remaining shareholders of the corporation or may be redeemed by the corporation pursuant to terms stated in the articles of incorporation or by laws of the corporation, or in a private agreement. In the absence of any such terms, such shares may be transferred to any individual eligible to be a shareholder of the corporation.

(b) If such a redemption or transfer of the shares held by a deceased shareholder or an ineligible person is not completed within twelve (12) months after the death of the deceased shareholder or the transfer, as the case may be, such shares shall be deemed to be shares with respect to which the holder has elected to exercise the right of dissent and has made written demand on the corporation for payment of the

fair value of such shares. The corporation shall forthwith cancel the shares on its books and the deceased shareholder or ineligible person shall have no further interest in the corporation other than the right to payment for the shares. For purposes of this subsection, the date of the corporate action and the date of the shareholder's written demand shall be deemed to be one (1) day after the date on which the twelve-month period from the death of the deceased shareholder, or from the transfer, expires.

SECTION 17. If all of the outstanding shares of a professional corporation are held by an administrator, executor, guardian, conservator, or receiver of the estate of former shareholder, or by a transferee who received such shares by operation of law or court decree, such administrator, executor, guardian, conservator, receiver, or transferee for a period of twelve (12) months following receipt or transfer of such shares may be a director, officer, or shareholder of the professional corporation.

SECTION 18. Corporations organized pursuant to this part shall render professional service and exercise its authorized powers under a name permitted by law and the professional ethics of the profession in which the corporation is so engaged. The corporate name of a professional service corporation must contain either the words "professional service" or "professional corporation" or the abbreviation "P.S." or "P.C." The corporate name may also contain either the words "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd." With the filing of its first annual report and any filings thereafter, the professional service corporation shall list its then shareholders; provided, that notwithstanding the foregoing provisions of this section, the corporate name of a corporation organized to render dental services shall contain the full names or surnames of all shareholders and no other word than "chartered" or the words "professional services" or the abbreviation "P.S." or "P.C."

SECTION 19. A nonprofit professional service corporation may amend its articles of incorporation at any time before the effective date of this part, to comply with the provisions of this part. Compliance under this part shall relate back and take effect as of the date of



formation of the corporation and the corporate existence shall be deemed to have continued without interruption from that date.

SECTION 20. A business corporation may amend its articles of incorporation to change its stated purpose to the rendering of professional services and to conform to the requirements of this part. Upon the effective date of such amendment, the corporation shall be subject to the provisions of this part and shall continue in existence as a professional corporation.

SECTION 21. A professional corporation may amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of title 48, chapters 11 through 27, or to the requirements of title 48, chapters 51-68, if organized pursuant to as a nonprofit nonstock corporation. Upon the effective date of such amendment, the corporation shall no longer be subject to the provisions of this part and shall continue in existence as a corporation under title 48.

SECTION 22. Nothing in this part shall authorize a director, officer, shareholder, agent or employee of a corporation organized under this chapter, or corporation itself organized under this part, to do or perform any part which would be illegal, unethical or unauthorized conduct under the provisions of the licensing act appropriate to the professional.

SECTION 23. A professional service corporation that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery who has applied to practice with the professional service corporation, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board.

SECTION 24. A foreign professional corporation may render professional services in this state so long as it complies with this part and each individual rendering professional services in this state is duly licensed or otherwise legally authorized to render such professional services within this state.

SECTION 25. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

part which can be given effect without the invalid provision or application, and to that end the provisions of this part are declared to be severable.

SECTION 26. This part shall take effect January 1, 2006, the public welfare requiring it.